

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CALLAWAY GOLF COMPANY,)
Plaintiff,) C.A. No. 06-91-SLR
v.))
ACUSHNET COMPANY,))
Defendant.) PUBLIC VERSION

**COMPENDIUM OF EXHIBITS IN SUPPORT OF ACUSHNET'S BRIEF
IN OPPOSITION TO CALLAWAY GOLF'S MOTION
FOR PERMANENT INJUNCTION**

VOLUME 3 OF 5

EXHIBITS 18 TO 27

OF COUNSEL:

Joseph P. Lavelle
Kenneth W. Donnelly
Mark L. Whitaker
Brian A. Rosenthal
Nicholas J. Little
HOWREY LLP
1299 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Tel: (202) 783-0800

Richard L. Horwitz (#2246)
David E. Moore (#3983)
POTTER ANDERSON & CORROON LLP
Hercules Plaza 6th Floor
1313 N. Market Street
P.O. Box 951
Wilmington, DE 19899
Tel: (302) 984-6000
rhorwitz@potteranderson.com
dmoore@potteranderson.com

*Attorneys for Defendant
Acushnet Company*

Dated: February 25, 2008
Public Version Dated: March 3, 2008
850758 /30030

TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>TITLE</u>	<u>EX.</u>
[REDACTED]	[REDACTED]	1
[REDACTED]	[REDACTED]	2
[REDACTED]	[REDACTED]	3
Nauman Decl.	Declaration of Joseph Nauman 2/25/08	4
[REDACTED]	[REDACTED]	5
[REDACTED]	[REDACTED]	6
[REDACTED]	[REDACTED]	7
[REDACTED]	[REDACTED]	8
[REDACTED]	[REDACTED]	9
[REDACTED]	[REDACTED]	10
[REDACTED]	[REDACTED]	11
[REDACTED]	[REDACTED]	12
[REDACTED]	[REDACTED]	13
Maher Decl.	Declaration of David Maher, 2/25/08, and Exhibits A-E	14
New Office Action '873	Office Action on '873 Patent, 1/7/08	15
New Office Action '293	Office Action on '293 Patent, 1/23/08	16
New Office Action '156	Office Action on '156 Patent, 1/30/08	17
Morgan Declaration	Declaration of William Morgan, 2/25/08	18

<u>DESCRIPTION</u>	<u>TITLE</u>	<u>EX.</u>
[REDACTED]	[REDACTED]	19
[REDACTED]	[REDACTED]	20
[REDACTED]	[REDACTED]	21
[REDACTED]	[REDACTED]	22
DX-1008	Acushnet Test Results 6/28/00	23
[REDACTED]	[REDACTED]	24
[REDACTED]	[REDACTED]	25
[REDACTED]	[REDACTED]	26
[REDACTED]	[REDACTED]	27
[REDACTED]	[REDACTED]	28
[REDACTED]	[REDACTED]	29
[REDACTED]	[REDACTED]	30
[REDACTED]	[REDACTED]	31
[REDACTED]	[REDACTED]	32
[REDACTED]	[REDACTED]	33
[REDACTED]	[REDACTED]	34
[REDACTED]	[REDACTED]	35

<u>DESCRIPTION</u>	<u>TITLE</u>	<u>EX.</u>
[REDACTED]	[REDACTED]	36
[REDACTED]	[REDACTED]	37
[REDACTED]	[REDACTED]	38
[REDACTED]	[REDACTED]	39
[REDACTED]	[REDACTED]	40

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on March 3, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on March 3, 2008, the attached document was Electronically Mailed to the following person(s):

Thomas L. Halkowski
Fish & Richardson P.C.
919 N. Market Street, Suite 1100
P. O. Box 1114
Wilmington, DE 19899-1114
halkowski@fr.com

Frank E. Scherkenbach
Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110-2804
scherkenbach@fr.com

Robert A. Denning
David S. Shuman
W. Chad Shear
Fish & Richardson P.C.
12290 El Camino Real
San Diego, CA 92130
denning@fr.com
shuman@fr.com
shear@fr.com

Jonathan J. Lamberson
Christina D. Jordan
Craig R. Compton
Fish & Richardson P.C.
500 Arguello Street, Suite 500
Redwood City, CA 94063
lamberson@fr.com
cjordan@fr.com
compton@fr.com

/s/ David E. Moore
Richard L. Horwitz
David E. Moore
Potter Anderson & Corroon LLP
Hercules Plaza – Sixth Floor
1313 North Market Street
Wilmington, DE 19899-0951
(302) 984-6000
rhorwitz@potteranderson.com
dmoore@potteranderson.com

EXHIBIT 18

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CALLAWAY GOLF COMPANY)
Plaintiff,)
v.)
ACUSHNET COMPANY,) C. A. No. 06-91 (SLR)
Defendant.)

DECLARATION OF WILLIAM E. MORGAN

I, William E. Morgan, hereby state as follows:

- 1) I am currently the Senior Vice President of Research & Development for Golf Balls at Acushnet Company ("Acushnet"). In that position, I am responsible for all golf ball R&D at Acushnet. With the exception of two years in golf club operations (1987-1988), I have worked in R&D at Acushnet since I joined the company in 1986. I have been directly responsible for Acushnet Company's golf ball product development since 1989.
 - 2) I have 25 years of experience in the golf industry. Before joining Acushnet, I worked at the Ben Hogan Company from 1982 to 1986. At Hogan I was a member of the golf ball R&D team working on both wound and solid two-piece golf balls.
 - 3) I graduated from the University of Dallas with a BS Biochemistry in 1977.
 - 4) I am an inventor on over 40 US Patents, all related to golf ball technology. I am named as an inventor on over 20 additional US Patent applications published and pending.

I. SUMMARY OF TESTIMONY

- 5) I understand that the Court in this case entered a judgment that eight of the claims at issue in this case are valid and infringed. While Acushnet is seeking to overturn that judgment, it is part of my job to comply with the Court's judgment unless and until such time as the judgment is vacated or overruled.
- 6) Acushnet is developing new and improved designs for its Pro V1 and Pro V1x products. It is Acushnet's current plan to release those new designs in the First Quarter of 2009, as part of its normal, two-year product cycle for the Pro V1 family of products. These new designs will make the Pro V1 and Pro V1x better products and will also avoid the patents in suit.
- 7) In this declaration, I explain how our new product development cycle works, and why it would be least disruptive on Acushnet, its customers, and those who use and sell its balls to allow Acushnet to introduce its new Pro V1 products as part of its normal business cycle. Such an introduction will result in new, non-infringing products being broadly available to the market by the end of the first quarter of 2009.

II. PRO V1 FAMILY NEW PRODUCT INTRODUCTIONS.

- 8) For a number of years, we have introduced new versions of the Pro V1 products on a product cycle that resulted in new models of the balls every two years. We time the shipment of new product so that it generally occurs in the First Quarter of the calendar year. The business of golf is seasonal (in most parts of the country) and we historically wanted to have new product available for shops before the Spring, when sales would start to pick up. This historically lead us to start shipping new products to customers in the First Quarter of the year. We launched new versions of the Pro V1 family in this fashion in 2003, 2005, and 2007. We plan to do the same in 2009. These plans were in place before the trial in this case.
- 9) We call these product launches "New Product Introductions." However, we will still call the balls the "Pro V1" and "Pro V1x." The term "new product" refers in this context to the 2009 version of the Pro V1 and Pro V1x. As is our usual practice, the 2009 versions of the balls will have a new model designation, or "side stamp," on the ball that will distinguish it from the earlier versions of the ball.

1

Redacted

III. THE 2009 NEW PRODUCT LAUNCH PROCESS

- 14) The process of launching new product for 2009 is already well underway. I here will explain what that will involve over the coming year.

1

Redacted

- 20) Our goal will be to have 2009 versions of the product available for pro players in about October, 2008, and to be in a position to be selling 2009 balls to our customers in the First Quarter of 2009.

Redacted

IV. LAUNCHING ON SCHEDULE IS VERY DESIRABLE

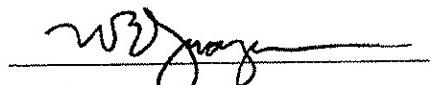
- 22) Hopefully, the foregoing makes it clear that launching a new product is a long, time consuming, and complex process for us. Hence, it would be very desirable to Acushnet and to its customers and employees, if we could launch the new ball, with a design that will not infringe the patents in suit, in our normal launch cycle leading to new product being available in 1Q09.
- 23) Obviously, we have discussed and investigated the potential to launch the redesigned ball sooner, in the event an injunction were to issue this year. However, such an untimely product introduction will cause considerable hardship to Acushnet. A mid-year launch will disrupt our current production of Pro V1s, divert employees from day-to-day duties to a more expedited conversion, and completely interrupt the new product development cycle described above.

- 24) Also, in the golf ball business, new products are traditionally launched in the beginning of the year. Our sales and marketing teams plan months in advance for these new product launches, and plan advertising and sales activities months in advance to launch new product during this period.

Redacted

- 26) In addition, our customers also are well aware of our new product introduction cycles, and expect to receive new product from us according to our usual practice. It is not unreasonable to expect that a mid-cycle introduction of new product could have an adverse effect on pro shops and other outlets that distribute our product.

I declare, under penalty of perjury, that the foregoing is true and correct.



William Morgan

Executed on: February 25, 2008

EXHIBIT 19

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 20

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 21

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 22

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 23

Veneer vs Callaway – blind test (6/28/00) Complete Game Feel and Performance

Purpose

Setup

Method

Background

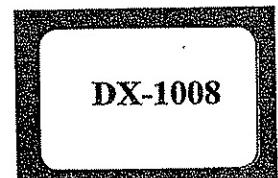
Results

Miscellaneous

Purpose: To compare the overall playability, particularly into the green, of the V-1 Prototype versus Callaway Red and Callaway Blue golf balls.

Set-up:

Ball type	V-1 Prototype, Callaway Red, Callaway Blue
Player pool	Phil Mickelson
Golf Clubs	Wedges, 8-iron, 7-iron, 5-iron, driver
Test location	Acushnet Test Facility, Oceanside



Method:

All of the balls were unmarked, painted white and encoded with a single letter (A, B, or C). Testing began with greenside play, from as close as 30 yards to the pin. Each shot type was hit a number of times with each ball type. Observations and discussion of feel and performance, including trajectory, spin, stopping power, were noted. In addition to wedge play, short iron and mid iron shots were played into the green and tee shots were hit both with a headwind and tailwind.

Background:

When discussing play into the green, "stopping the ball close to the hole," Phil stated that the more important part of that is stopping the ball. To him, if he cannot stop the ball, worrying about getting it close is pointless. He told me that his bread and butter, his money shot, hinges on the fact that the cover of the ball must grip the clubface. The ball has to get into the grooves so he can have total control on the spin and direction of the shot.

Results:

20-40 yards, LW:

The performance and feel of both the Blue and Veneer was what Phil was looking for. It was neck and neck until he hit from the deep rough when he declared that the Veneer prototype felt like ~~the~~ and the Blue ball felt like a ball that was trying to ~~the~~. They both felt very good, it was a draw. The Red ball simply did not make the grade for greenside play - "it is not what I want." When chipping from a perfect lie it was fine, but any variable lie it was difficult to control spin or trajectory.

Initially, the Blue had the optimal launch and spin combination that Phil desires for this shot (30 - 40 yards to the pin, in the fairway). The Red ball was good from a perfect lie and when well struck, but from a fluffy lie (or any imperfect lie or contact) the ball jumped off the face - it launch too high and did not have enough spin, Phil lost control of these shots. The Veneer ball

spun the same as the Blue, it too felt soft, but it felt as if it was a solid ball with a soft cover and the Blue ball felt like [REDACTED]

He then hit additional shots, from the fairway, first cut and second cut of rough: The Blue ball still feels and performs similar to [REDACTED]. It has the ideal spin and trajectory. The Veneer prototype performed as well as the Blue, and did not necessarily feel worse, but Phil felt as if he was hitting a "bigger ball." As he hit from the deeper rough he took a strong liking to the Veneer prototype. Still couldn't tell much difference in feel, but the Blue ball launched a little too high out of the deep rough. The Veneer ball was more "efficient," meaning it stayed lower and bit well even out of an against-the-grain-deep-rough shot. The Red was not too bad, but was not what Phil wanted.

100 yards, LW and 55° Vokey:

Fairway: The Red ball felt better with a full shot; based on his feel greenside, he expected a harder feel. Veneer and Blue were definitely hard to tell apart. The Red ball still launches higher and it feels like it scoots left. On solid shots the Red is OK, but his mishits slide short left. Phil said, "The performance of the [Red] is suspect to the lie. I'll be tentative with that ball on a sketchy lie out of the rough or even in the fairway. With the [Veneer] and [Blue] I feel like I can be aggressive - I can go in after it and it will come off the face with the right amount of spin."

Greenside: Veneer and Blue had similar ball flight into the green. These balls would come in fairly steep, hit and 1-hop, and spin back 4-7 feet. The Red balls came in notably steeper, and with less spin. These balls dropped in and stopped where they hit. (This was the case for both clubs.)

150 yards, normal 8-iron:

Fairway: Phil stated that it appeared as if the Veneer ball stayed in the air longer, that it was coming down at a slower rate - as if it is hanging a little bit longer. This was neither desirable nor objectionable, just different. (I think that this distance is where the solid vs wound flight characteristics begin to appear.) The Red ball flew well from here, even on the mishits; it is starting to feel more "normal," and doesn't feel as comparably hard as it did around the green. The magnitude of difference between the Red balls and either the Veneer or Blue has gotten smaller, the "kick" in launch is not as dramatic and the feel is getting closer to the softer balls.

Greenside: The Blue balls hit and rolled about 4-6 feet. The Veneer balls hit and sat. The Red balls fell in shorter than the other two, hit and sat. (There was a considerably wider dispersion in the land area for the Red balls because Phil was intentionally striking them poorly to examine feel and launch variability from this distance.)

150 yards, easy 7-iron:

Fairway: The Blue ball has a "looseness" in the flight the Veneer ball is less likely to exhibit. It is as if it oscillates during ascent, looks like it's a cut then it'll draw. The Veneer ball holds the line tighter and has a more penetrating flight. Phil had more confidence in the performance of the Veneer ball than the Blue ball due to the odd flight. Also, he had all but written off the Red ball, but did hit several shots with it if asked. It was starting to feel more like the other test balls, it still felt harder when he mis-struck a ball, but he seemed to be suspicious of it on account of the earlier shots. Veneer and Blue once again had very similar feel, but the more reliable flight of Veneer gave it an edge in performance.

Greenside: The flight into the green with Veneer and Blue looked very similar - they came in shallower than with the 8-iron, and released a couple of yards toward the pin.

180 yards, knock-down 4-iron:

Fairway: Only a few shots with each ball type were hit from here. (This was more of a disaster check for feel off the longer irons, as it is an odd yardage to hit into a green.) Phil hit these shots a variety of ways, mostly knocked-down and releasing to the pin - much like the type of shot he is expecting to play in the British Open. The "looseness" in the flight of the Blue that Phil started to

see with shorter shots was magnified with this shot. He was uneasy about the flight of that ball. He said that the feel was fine, as good as would expect from his ball.

Greenside: The balls all came in low and released several yards. There was nothing really distinctive about angle of descent, and the shot dispersion was high (due to the variety of shots Phil chose to hit) - however the Reds seemed to be a little longer.

Driver, headwind:

Phil is looking for maximum allowable distance, without selling-out the ability to cut or turn-over shots off the tee.

The Veneer ball was straighter, with less dispersion than the other balls. It took Phil about three drives with each ball type to completely dismiss the Red, and the performance with the Blue was undesirable due to the increased penalty on mishits. The Blue ball also seemed to have more than the ideal amount of spin. The Veneer prototype was consistently longer into the wind - about 10 yards or so longer than anything else was.

Once the identity of the balls was revealed, I had Phil hit the Veneer prototype against new Reds (off the shelf) [REDACTED]. The [REDACTED] had lower launch and higher spin - expect when he turned it over, then the spin is down. The Veneer was consistently longer into the headwind (which was steady and moderate). The straighter flight and tighter dispersion of the Veneer noted during the blind test held up against both the [REDACTED] and Red.

Driver, tailwind:

Phil only hit Veneer prototypes and Red balls (out of the package). He teed the ball higher, and sat back and went after these balls (the wind was steady and moderate). All of the balls were within 5 yards of one another. There was no advantage to either downwind.

Miscellaneous:

Phil's wedges have milled grooves, and are extremely aggressive (see: Phil's bread and butter shot). They're definitely toeing the 'legal' line.

After hitting the drivers into the wind, we discussed the nature of the prototypes. It took Phil about two minutes to realize that there were competitive products in the test. Eventually I told him what was what, and to confirm what we saw on the blind test, he should hit regular (off the shelf) competitive product. He had said that he had played Callaway Red recently and they weren't as good off his irons. At the time he had chalked it up to lack of play/practice. His responses during the blind test confirmed what he had noticed earlier. He did choose to hit drives head to head with the Veneer prototype and the Callaway Red balls (both with and into the wind).

Phil's more memorable quotes at the end of the blind test:

"C [Red] is the epitome of a shitty ball," said Phil after two drives. "It spins like crap around the greens. It goes short and flutters with the irons. You can have that one."

"The A [Veneer] is a frickin' awesome ball. It has a tight ball flight. Into the wind it is holding a tight flight, there's no flutter. The sauce is tremendous around the green. It flew by those other two that I hit well."

"The B [Blue] ball isn't that different, and granted that I'm not swinging the best, but the misses are just so magnified with the B ball. It flutters up and to the left. I'm not all that high on that one."

Discussion that I think needs to be addressed while actually playing golf:

"The ideal ball would be a ball that went further than the Prestige does off the driver, and reacts the same around the green. But here's the catch though.... here's the sacrifice that I'm not sure

how you would fix it and if its fixable: the driver you want to go far, but you don't want your 7-iron to stay in the air. Like the driver you can hit it and have it stay in the air and have it go as far as it can, and every now and then with the solid balls you'll find that they'll just GO, they won't come down out of the air, but you don't want that with the 7 iron - you want it to go a certain yardage."

What we were talking about is when does spin and shot shape kick in more than initial velocity? He doesn't care if the difference between a strong and easy 2-iron is 20 yards or so, but that can't happen with a the mid irons. He will lose faith in what club will get him to the pin, and that out of control feeling is, simply put, bad.

EXHIBIT 24

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 25

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 26

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**

EXHIBIT 27

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**